

***What Every Member of the
Trade Community Should Know About:***

CLASSIFICATION OF FESTIVE ARTICLES

as a result of the *Midwest Of Cannon Falls* Court Case



An Advanced Level
Informed Compliance Publication of the
U.S. Customs Service

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or “Mod Act,” became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are “*informed compliance*” and “*shared responsibility*.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The Special Products Branch of the National Commodity Specialist Division, and the General Classification Branch of the Commercial Rulings Division, Office of Regulations and Rulings, and the Field National Import Specialist, Los Angeles have prepared this publication on **Classification of Festive Articles as a result of the *Midwest of Cannon Falls Court Case***, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs valuation issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

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CLASSIFICATION OF FESTIVE ARTICLES

as a result of the *Midwest Of Cannon Falls* Court Case

Introduction

The Court of Appeals for the Federal Circuit (CAFC) issued on August 14, 1997, its decision on the appeal and cross-appeal of the Court of International Trade's (CIT) decision in the case of *Midwest of Cannon Falls v. United States*. This CAFC decision, Court Nos. 96-1271, 96-1279, 1997 U.S. App. LEXIS 21617, amounted to a review of the entire case as decided by the CIT at the trial level. The CIT rejected the Customs position with respect to a wide range of goods that Customs had liquidated under headings other than 9505. Of the goods at issue, the bulk of them were held to be classified under heading 9505. Of the remainder, a few were determined to be non-festive, in accordance with Customs position, basically because of their utilitarian characteristics. Customs appealed on the items it lost and the importer appealed most of what they had lost. The CAFC affirmed the CIT with respect to the items the importer had won and reversed Customs on the few items held non-festive, making all the merchandise at issue festive under heading 9505.

The following document is being provided in response to our obligation to advise the public of the means by which Customs intends to implement the decision of the U.S. Court of Appeals for the Federal Circuit in the case of *Midwest of Cannon Falls v. United States*. Customs Headquarters and field offices have received numerous telephonic inquiries concerning the types of articles covered by the decision and the means by which Customs will undertake full implementation of the decision. The authority for the issuance of this document is contained in §625(e), Tariff Act of 1930 [19 U.S.C. 1625(e)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057). This section provides in part that the government may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. This document notes that the authority for the change in the interpretation of the law rests with the Court. The government thereafter may see a need to inform importers of the change made by the Court. This document is intended to perform that function by providing the public general information, as well as indicating those instances when new individual rulings are advisable.

In order to ensure a careful implementation of the CAFC decision, this document provides guidance to the field and the trade, setting out the "old" standards for festive and the corresponding changes for each article of which we are aware. The first portion has been prepared by the National Commodity Specialist Division in consultation with the staff of the Commercial Rulings Division in Headquarters. The appendix, which we also agree with, was provided by Mr. Prentiss Mitchell, Field National Import Specialist in Los Angeles, setting forth the same conclusions from another

perspective and based upon the CIT's decision. It is hoped that the two approaches, when read together, will answer questions that will arise when importers ask (or assert) that their merchandise is governed by the decision in *Midwest*.

Headquarters has received a number of calls from importers asking how they should proceed with entering merchandise that they believe is substantially similar to merchandise classified in the *Midwest* decision. For those importers who hold Customs rulings that they believe are affected by the decision, they should be advised to present their ruling on entry, indicating to the port that the ruling has been revoked by operation of law as it relates to particular, identified articles. Import specialists should follow standard procedures, seeking advice through electronic 6431's, or any other appropriate means to arrive at the correct classification. If necessary, internal advice made be sought and when correct classification cannot be resolved at the port level, the importer should be advised to protest the entries. In the case of importers who do not hold a Customs ruling, they may be advised, as usual, to request a ruling under Part 177, Customs Regulations. Holders of preclassification rulings will need to examine their classification carefully to determine which classification they will want to rely on, but Customs takes the position that insofar as there are individual classifications in our rulings or preclassification decisions that are inconsistent with the *Midwest* decision, they have been revoked by operation of law. See Section 152.16 (e), Customs Regulations, 19 CFR 152.16(e). Customs will neither amend preclassification rulings nor issue regular binding rulings on its own initiative, but will respond to requests for new rulings that will be issued based on the change in the applicable law.

FOR FURTHER INFORMATION CONTACT: Ms. Alice Masterson, NIS 222, (212) 466-5892 (Christmas related); Ms. Alice J. Wong, NIS 225, (212) 466-5538 (festive, other than Christmas related).

Background

Heading 9505 has been the subject of a lot of debate since the beginning of the HTS. By focusing on the language in the Explanatory Notes and applying the following criteria (called the three prong test), Customs established narrow classes or kinds of merchandise which would be classified in 9505 at the GRI 1 level.

THE ORIGINAL THREE PRONG TEST

Classification of the subject merchandise rests on its apparent satisfaction of the guidelines set for festive articles. In general, merchandise is classifiable in heading 9505, HTSUSA, as a festive article when the article, as a whole:

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);

2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article.

Christmas Tree Ornaments

Remain classified in 9505.10.10 - 9505.10.25. To qualify as a Christmas tree ornament, in addition to satisfying the three prong test, the article must a) be advertised and sold as a Christmas tree ornament, b) have a loop or some method to attach to a tree, c) not be too heavy or big to be hung or attached to a tree.

Applying the above, a number of items and motifs were established as being GRI 1 items of 9505. Please note: prior to *Midwest of Cannon Falls*, only decorative items were considered to be classifiable in 9505. All functional or utilitarian items were excluded.

Prior to Midwest Of Cannon Falls

Prior to the *Midwest Of Cannon Falls* court case, the following purely decorative items and their appropriate accessories were classified within the festive heading 9505. They were considered to be traditional items (as per the Explanatory Notes) or similar to those items. The items themselves were classifiable as festive articles regardless of the motif. In other words, the motif of these items did not have to be traditional in color or theme.

For 9505.10:

Artificial Christmas trees

Tree Skirts

Tree ornaments

 certain pull toys

Advent Calendars

Christmas Pyramid

Certain Articles created from certain Artificial Foliage

 Wreaths

 Centerpieces

 Candle rings

 Garlands

 Mistletoe

(Evergreen branches, poinsettia,
pine cone, pine needle leaves,
holly leaves, laurel leaves
 holly berries, mistletoe)

Dolls

 All representations of Santa

Statuettes and figurines

 All representations of Santa

Christmas Angels

Animated Display Figures

Porcelain Christmas Villages

Christmas Stockings

Christmas Stocking Holders

Nativity Sets

For 9505.90:

Easter Eggs (three dimensional, colored)

Jack-O-Lantern (three dimensional capable of illumination)

Animated Display Figures

Based upon the items above, it is clear Christmas, Easter and Halloween were the only recognized holidays for which we had determined specific festive articles and motifs.

The *Midwest Of Cannon Falls* case has modified the three prong test and thus expanded the number and types of items which will now be classifiable in 9505. However, there are still restrictions. Citing the specific language of the *Midwest* court case:

1. The items must be advertised and sold to consumers before the particular **holiday** with which they are associated.
2. The items must be used in celebration of and for entertainment on a joyous **holiday**.

POST MIDWEST THREE PRONG TEST

Classification of the subject merchandise rests on its apparent satisfaction of the guidelines set for festive articles. In general, merchandise is classifiable in heading 9505, HTSUSA, as a festive article when the article, as a whole:

1. is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal;
2. functions primarily as a decoration or functional item used in celebration of and for entertainment on a holiday and
3. is associated with or used on a particular holiday.

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article. It must be used in the same manner as merchandise which defines the class.

Christmas Tree Ornaments

Remain classified in 9505.10.10 - 9505.10.25. To qualify as a Christmas tree ornament, in addition to satisfying the three prong test, the article must a) be advertised and sold as a Christmas tree ornament, b) have a loop or some method to attach to a tree, c) not be too heavy or big to be hung or attached to a tree.

Other Christmas Items

If properly classified in 9505.10, but not a tree ornament, the item will be classified in 9505.10.40 or 9505.10.50 as appropriate.

Classification Within Heading 9505 as a Result of the *Midwest Of Cannon Falls* Court Case

I Additional Festive Occasions

The *Midwest Of Cannon Falls* decision recognized the following festive occasions (holidays):

Christmas
Valentine's Day
Easter
Halloween
Thanksgiving

II Additional Items

The Midwest case identified the following additional items to be classified in festive:

In 9505.10:

Dolls
 All representations of Mrs. Santa Claus
 Nutcrackers
Statuettes and figurines

All representations of Mrs. Santa Claus
Wooden pull toys
Christmas Water Globes

In 9505.90:
Heart shaped metal wreath
Easter water globes
Jack-o'-lanterns (do not have to be capable of illumination)

III Expanded Interpretation of 9505 Motifs, Symbols or Representations

A. Decorative Items

For purely decorative items, [examples of purely decorative items are plaques, wall hangings, water globes, statuettes] the following patterns or motifs will cause classification as Festive (if allowed by the Chapter notes):

In 9505.10:
Santa Claus
Mrs. Santa
Decorated Christmas Tree
Nativity Scenes
Christmas Stockings
Rudolph the Red-Nose Reindeer

In 9505.90:
Jack-O'-lantern

B. Utilitarian Items

If the item is functional, the item MUST BE a three dimensional full bodied representation of the above mentioned motifs (not just a silhouette). (Some examples of utilitarian items are Kitchen and Tableware; cups, cookie jars, pitchers, teapots, serving bowls, and baskets)

This interpretation of *Midwest's* impact on functional items immediately excludes wearing apparel, towels, sheets, linens and similar furnishings. Watches, clocks and even Christmas Cards are also functional, and therefore must be three dimensional. Most will, therefore, be excluded from 9505. The origin of this position is the CAFC decision reversing the few classifications that the government prevailed on at the trial in the CIT. In each case where the CIT (and Customs) was reversed, the utilitarian article was three-dimensional, e.g., a jack-o'-lantern pitcher and mug.

Therefore, in implementing the CAFC decision, Customs will go just as far as the CAFC went, but no further, in broadening the scope of the heading.

IV Additional Motifs, Symbols or Representations

A. Decorative Items

For purely decorative items, the following patterns or motifs will raise the possibility of classification as Festive (if allowed by the Chapter notes) by application of the factors discussed in *United States vs. The Carborundum Co.*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976)¹.

In 9505.10:

Angel

Reindeer

“Noel”

“Peace on Earth”

“Merry Christmas”

“Ho Ho Ho”

Words from well known Christmas Carols and Christmas songs.

In 9505.90:

Ghost

Skeleton

Black Cat

“Boo”

“Happy Halloween”

Witch

¹ As stated in *United States v. The Carborundum Co.*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain “class or kind.” These factors include:

- a) the physical characteristics of the merchandise,
- b) the expectation of the ultimate purchases,
- c) the channels of trade of the merchandise,
- d) the environment of the sale (accompanying accessories, manner of advertisement and display)
- e) used in the same manner as merchandise which defines the class,
- f) the economic practicality of so using the import,
- g) recognition in the trade of this use.

If the importer cannot provide catalogue or sales information and other information on Carborundum factors, Customs will deny claim as a festive article.

“Happy Thanksgiving”
Turkey
Pilgrim & Indians
Easter Bunny
Easter Egg
Heart
Easter Lily
“Happy Easter”
“Happy Valentines Day”

B. Utilitarian Items

If the item is functional, the item MUST BE a three dimensional full bodied representation of the above mentioned motifs (not just a silhouette) and meet the *Carborundum* tests.

(Some examples of utilitarian items are Kitchen and Tableware; cups, cookie jars, pitchers, teapots, serving bowls, and baskets.) This interpretation of *Midwest's* impact on functional items immediately excludes wearing apparel, towels, sheets, linens and similar furnishings.

V Other Holidays, Articles, Motifs, Symbols or Representations

Festive holidays, festive articles, festive motifs, symbols or representations not mentioned will have to undergo a *Carborundum* test.

VI Alphabetical Industry Products List

Animated Figures, Display - 9505.10 & 9505.90
Animated Figures, Indoor - See **V** above
Animated figures, Outdoor - See **V** above
Audiotapes, Holiday - Excluded from 95: Chapter 85 Note 6
Baskets, Holiday - See **V** above
Bells & Chimes - Excluded from 95 if Heading 8306
Books, Holiday - See **V** above
Bows - Numerous issues
Calendars - Advent is 9505.10; Others, see **V** above
Candles - Excluded from 95 by 9505 EN (b)
Candle Holders - see **V** above, must be three dimensional
Centerpieces - see **V** above
Collectibles, Limited Edition - see **V** above
Compact discs, Holiday - Excluded from 95: Chapter 85 Note 6
Costumes, Holiday - Excluded with exception; Chapter 95 Note 1(e)
Craft Supplies & Hobby Kits - see **V** above

Display, In-Store Materials - see **V** above
Dolls - Excluded except for Mr. & Mrs. Claus
Door & Window Decorations, Exterior - see **V** above
Door & Window Decoration, Interior - see **V** above
Fabric - too general a term to comment
Figurines - Mr. & Mrs. Claus are 9505; Others see **V** above
Flock - too general a term to comment
Floral, Silk/Polyester - see **V** above
Garland, Bead - see **V** above
Garland, Paper/Ribbon - see **V** above
Garland, Pine - 9505.10
Garland, Tinsel - 9505.10
Giftware - too general a term to comment
Giftwrap, Bags & Boxes - Excluded by 9505 EN (c)
Giftwrap, Paper - Excluded by 9505 EN (c)
Giftwrap, Ribbons & Bows, Bowmakers - Excluded by 9505 EN (c)
Giftwrap, Tags & Seals - Excluded by 9505 EN (c)
Greeting Cards - Functional - must be three dimensional
Home Furnishings, Holiday - see **V** above
Lamp Toppers - see **V** above
Lighting Accessories - see **V** above; electric garlands excluded
Lights, Indoor - functional, must be three dimensional, see **V** above; electric garlands excluded
Lights, Outdoor - functional, must be three dimensional, see **V** above; electric garlands excluded
Musical Decorations - see **V** above
Nativity Sets - 9505.10.30
Nutcrackers - all human representations are 9505; Other - see **V** above
Ornaments, Cloth & Satin Wrap - if for tree - 9505.10.25
Ornaments, Glass - if for tree - 9505.10.10
Ornaments, Limited Edition - if for tree - 9505.10
Ornaments, Metal - if for tree - 9505.10.25
Ornaments, Novelties - if for tree - 9505.10
Ornaments, Paper - if for tree - 9505.10.25
Ornaments, Plastic - if for tree - 9505.10.25
Ornaments, Polyfoam - if for tree - 9505.10.25
Ornaments, Porcelain - if for tree - 9505.10.25
Ornaments, Resin - if for tree - 9505.10.25
Ornaments, Wood - if for tree - 9505.10.15
Outdoor Decorations, Illuminated - see **V** above
Outdoor Decorations, Inflatable - see **V** above
Outdoor Decorations, Non-illuminated - see **V** above
Party goods - too general to comment

Picks, floral Holiday - see V above
Plush - too general to comment, but most plush are toys
Potpourri - see V above
Ribbon - see V above; Excluded by 9505 EN(c)
Rugs, Holiday - Functional, too general to comment
Snow, Artificial - see V above
Snow Blankets - see V above
Stocking & Hangers - 9505.10
Stocking Stuffers - too general to comment, generally are toys
Storage Boxes, Holiday - Excluded, not used at holiday
Tabletop Decorations, Illuminated - too general to comment
Tabletop Decorations, Nonilluminated - too general to comment
Tinsel, icicles - 9505.10
Tree Preservatives - Excluded, see 9505 EN (a)
Tree Skirts & Mats - 9505.10
Tree Stands - Excluded by 9505 EN (d)
Tree Tops - if tree toppers, 9505.10
Trees, Flocked - Artificial Christmas trees are 9505.10
Trees, Foldaway - Artificial Christmas trees are 9505.10
Trees, Table - Artificial Christmas trees are 9505.10
Trees, Vinyl - Artificial Christmas trees are 9505.10
Videotapes, Holiday - Excluded from 95: Chapter 85 Note 6
Water Globes - see V above
Wreaths, Illuminated - see V above
Wreaths, Nonilluminated - see V above

Other Information

Other Court Cases and stipulations that have affected 9505:

Club Distribution - Christmas Carolers in Sleigh, Slip Op. 96-109 (CIT 1996)
Department 56 - Porcelain Houses, Stipulated Judgment on Agreed Statement of Facts,
Decided August 4, 1994, Court No. 93-01-00033

Pending Cases which may have an impact:

Avon Products - Commemorative Plates, Court No.93-03-00194

Questions & Answers

Question 1:

Can a functional item which is normally **FLAT** be considered three dimensional (assuming it met Carborundum)?

Answer to 1:

In Customs view, no. Many decorative functional items are normally flat. Table cloths, potholders and picture frames come to mind. These items would not meet the three dimensional representation test we have established for utilitarian items. The item must be more than a mere silhouette.

Question 2:

Does the pattern or motif of a functional item have to go all the way around?

Answer to 2:

Yes

Question 3:

Does the item have to be used in celebration of and for entertainment on a joyous holiday?

Answer to 3:

Yes. Are picture frames “used in celebration of and for entertainment?” Possibly the only time the company could sell the item - ghost silhouette picture frame - would be Halloween. But would the item only be used at Halloween? Once the picture is put inside the frame it would not be put away until the next years holiday.

Carborundum factor e) “used in the same manner as merchandise which defines the class,” allows us to show that the class of the ghost picture frame is picture frames, not festive article used in celebration of and for entertainment on a joyous holiday.

A similar argument can be made for toys. Most toys are sold at Christmas time, but they belong to the class of items known as toys. A stuffed toy Mickey Mouse dressed in a Santa Suit would only be sold during the Christmas selling season, but it is still a toy.

HTS Listing

Midwest Of Cannon Falls does not overrule Section and Chapter Note exclusions. Further, the court did not invalidate or void any Explanatory Note of Heading 9505 or find them to be at cross-purposes with the statutory language of the heading or subheadings. Therefore, the next several pages list the various Section, Chapter and Explanatory Notes which must be considered when classifying within Heading 9505.

Explanation of the coding on the following listing:

The Section and Chapter Note number which excludes “Articles of Chapter 95” is so noted.

Lines in Bold are the Chapter 95 exclusions.

Lines in bold italics are the Heading 9505 Explanatory Notes exclusions.

(Words in italic, not bold, mean there is a Chapter 95 limitation in that section, chapter or heading)

Sections, Chapter and Headings

Chapter 6: Live Trees and Other Plants

Natural Christmas trees

Chapter 34: Soap, Waxes, Candles, Modeling Pastes and the like

Christmas tree candles (heading 3406)
Christmas candles and Christmas tree candles (heading 3406)

Chapter 36: Explosive, Pyrotechnic Products, Matches, etc.

Fireworks or other pyrotechnic articles of heading 3604

Chapter 39: Plastic - Note 2 (v) excludes “Articles of Chapter 95”

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).

Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example Chapter 39 or 48).

Chapter 40: Rubber -Note 2 (f) excludes “Articles of chapter 95 (other than sports gloves and articles of headings 4011 to 4013).” [4011 & 4012 = tires, 4013 = inner tubes]

Chapter 42: Leather, Containers etc. - Note 1 (l) excludes “Articles of Chapter 95”.

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.
Sports bags or other containers of Heading 4202, 4303, or 4304.

Chapter 43: Fur - Note 2 (f) excludes "Articles of 95".

Sports bags or other containers of Heading 4202, 4303, or 4304.

Chapter 44: Wood - Note 1 (p) excludes "Articles of 95".

Sports craft such as canoes and skiffs (chapter 89), or their means of propulsion (chapter 44 for such articles made of wood.
The heading excludes statuettes, statues and the like of a kind used for decorating places of worship.

Chapter 45: Cork - Note 1 (c) excludes "Articles of 95"

Chapter 48: Paper & Paperboard -Note 1 (p) excludes "Articles of 95".

Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example Chapter 39 or 48).

Chapter 49: Books and Printed matter -Note 1(c) excludes "Playing cards or other goods of chapter 95".

Section XI: Textile and Textile Articles - Note 1 (t) excludes "Articles of Chapter 95".

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.
Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).
Sports clothing or fancy dress, of textile, of chapter 61 or 62.
Textile flags or bunting, or sails for boats, sailboards, or land craft, of chapter 63.
Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example Chapter 39 or 48).

Chapter 53: Other Vegetable Textile Fibers; Paper Yarn and woven Fabrics of Paper Yarn

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 54: Man-Made Filaments

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 55: Man-Made Staple Fibers

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 56: Wadding, Felt and nonwovens: Special Yarns; Twine, cordage, Ropes and Cables and Articles thereof

Yarns, monofilament, cords or gut or the like for fishing, cut to length but not made up into fishing lines, of chapter 39, heading 4206 or Section XI.

Chapter 61: Articles of Apparel and Clothing Accessories, Knitted or Crocheted

**Sports clothing or fancy dress, of textile, of chapter 61 or 62.
Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).**

Chapter 62: Articles of Apparel and Clothing Accessories, Not Knitted or Crocheted

**Sports clothing or fancy dress, of textile, of chapter 61 or 62.
Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).**

Chapter 63: Other Made Up Textile Articles; Needlecraft Sets....

**Racket strings, tents or other camping goods, or gloves (classified according to their constituent material).
*Textile flags or bunting of heading 6307.***

Chapter 64: Footwear -Note 1 (f) excludes "Toy footwear or skating boots with ice or roller skates attached; shin-guards or similar protective sportswear (chapter 95)."

Sports footwear (other than skating boots with ice or roller skates attached) of chapter 64, or sports headgear of chapter 65.

Chapter 65: Headwear -Note 1 (c) excludes “Dolls’ hats, other toy hats or carnival articles of chapter 95.”

Sports footwear (other than skating boots with ice or roller skates attached) of chapter 64, or sports headgear of chapter 65.

Chapter 66: Umbrellas, etc. -Note 1 (c) excludes “Goods of chapter 95”

Walking-sticks, whips, riding-crops or the like (heading 6602), or parts thereof (heading 6603).

Chapter 67: Feathers, Artificial Flowers, Hair -Note 1 (e) Toys, sports equipment, or carnival articles (chapter 95)

Chapter 68: Stone - Note 1 (l) excludes “Articles of Chapter 95.”

The heading excludes statuettes, statues and the like of a kind used for decorating places of worship.

Chapter 69: Ceramic - Note 2 (k) excludes “Articles of Chapter 95.” CITED IN THE COURT CASE

The heading excludes statuettes, statues and the like of a kind used for decorating places of worship.

Chapter 70: Glass & Glassware -Note 1 (f) excludes “Toys, games, sports equipment, Christmas tree ornaments or other articles of chapter 95 (excluding glass eyes without mechanisms for dolls or for other articles of chapter 95).”

Unmounted glass eyes for dolls or other toys, of heading 7018.

Chapter 71: Precious Metals, jewelry, etc. -Note 1 (n) excludes “Articles covered by note 2 to chapter 95.”

Section XV: Articles of Base Metal - Note 1 (l) excludes “Articles of Chapter 95.”

Christmas tree stands (classified according to constituent material)

Chapter 73: Articles of Iron or Steel

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 74: Copper and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 75: Nickel and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 76: Aluminum and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 78: Lead and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 79: Zinc and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 80: Tin and Articles Thereof

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 82: Tools, Implements, Cutlery, Spoons & Forks, of Base Metal; Parts Thereof of Base Metal

Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)

Chapter 83: Miscellaneous Articles of Base Metal

Bells, gongs or the like of heading 8306.
Frames and mirrors of heading 8306 (parts of General Use)

Section XVI: Machinery and Mechanical Appliances etc. -Note 1 (p) excludes “Articles of Chapter 95.”

Chapter 84: Machinery and Mechanical Appliances

Pumps for liquid (heading 8413), filtering or purifying machinery and apparatus for liquids or gases (heading 8421), electric motors (heading 8501), electric transformers (8504), or radio remote control apparatus (heading 8526).

Chapter 85: Electrical Machinery & Equipment; Sound Recorders; TV Image and Sound Recorders and Reproducers and Parts etc.

Note 6. Records, tapes and other media of heading 8523, or 8524 remain classified in those headings, whether or not they are entered with the apparatus for which they are intended.

Pumps for liquid (heading 8413), filtering or purifying machinery and apparatus for liquids or gases (heading 8421), electric motors (heading 8501), electric transformers (8504), or radio remote control apparatus (heading 8526).

Section XVII:

Sports vehicles (other than sleds, bobsleds, toboggans and the like) of section XVII.

Chapter 87: Vehicles Other Than Railway Stock; Parts etc.

Children’s bicycles (heading 8712).

Chapter 89: Ships, Boats and Floating Structures

Sports craft such as canoes and skiffs (chapter 89), or their means of propulsion (chapter 44 for such articles made of wood.

Chapter 90: Optical, etc. - Note 1 (k) excludes “Articles of Chapter 95.”

Spectacles, goggles or the like, for sports or outdoor games (heading 9004).

Chapter 92: Musical Instruments -

Note 1 (c) excludes “Toy musical instruments or apparatus (heading 9503).”

Decoy calls or whistles (heading 9208).

Chapter 93: Arms & Ammunition -

Note 1 (e) excludes “Bows, arrows, fencing foils or toys (chapter 95).”

Arms or other articles of chapter 93.

Chapter 94: Furniture, Illuminating Articles -

Note 1 (l) excludes “Toy furniture or toy lamps or lighting fittings (heading 9503) billiard tables or other furniture specially constructed for games (heading 9504), furniture for magic tricks or decorations (other than electric garlands) such as Chinese lanterns (heading 9505).”

Electric garlands of all kinds (heading 9405).

Electric garlands of all kinds (heading 9405).

Chapter 96: Miscellaneous Articles - Note 1 (l) excludes “Articles of Chapter 95.”

Appendix

MIDWEST OF CANNON FALLS, INC.

V.

THE UNITED STATES

Midwest is an importer of holiday related merchandise.

The merchandise at issue:

1. Wooden Nutcrackers
 - a. Santa
 - b. Soldier
 - c. King
 - d. Presidents
 - e, Athletes
 - f. Professionals
2. Wooden pull toy (ice skater)
3. Wooden Toy smoker (Santa)
4. Porcelain and fabric mache Santa
5. Fabric mache Mrs. Claus
6. Cast iron stocking hangers (Santa)
7. Cast iron stocking hangers)Santa with lamb)
8. Cast iron stocking hangers (Christmas elf)
9. Cast iron stocking hangers (stacked animals)
10. Cast iron stocking hangers (cargo car)
11. Terra cotta turkey container
12. Earthenware rabbit
13. Heart-shaped metal wreath
14. Jack-o'-lantern earthenware mug
15. Jack-o'-lantern earthenware pitcher
16. Christmas water globe
17. Easter water globe
18. Santa with chimney smoker
19. Fabric mache Santa with bag of toys
20. Fabric mache Scanda Klaus
21. Fabric mache MacNicholas
22. Porcelain Santa with light-up tree
23. Resin figures (hooded Santa roly-poly)

24. Resin Figures (figures decorating tree)
25. Resin figures (Santa in sleigh)
26. Resin figures (Santa with tree)
27. Resin figures (old-fashioned Santa figure)
28. Resin figures (Santa with deer)
29. Resin figures (Santa sewing an American flag)

The trial Court found that the subject items are advertised and sold only to consumers prior to the particular holiday with which they are associated.

Midwest argues that the Halloween, Thanksgiving, Valentine's Day and Easter related items should be classified as festive articles under 9505.90.6000, and the other items should be classified 9505.10.

Definition of Christmas Ornament Under Heading 9505

Customs: Items that fall within the scope of the term "ornament":

1. Must hang from a tree,
2. Must be inexpensive
3. Must be traditionally associated with Christmas [Court's misunderstanding, not the Customs position]
4. Must be non-durable

Midwest - Items need not meet these conditions.

Court - The court agrees with Midwest, with respect to 1, 2 and 3. In that all involved items were non-durable the Court did not rule on the durability issue.

- A. The meaning of a tariff term is a question of law.
- B. Courts interpret the tariff acts in order to carry out legislative intent.
- C. The first source for determining legislative intent is the statutory language.
- D. In ascertaining the plain meaning of a particular statutory term, the Court presumes that Congress frames tariff acts using the language of commerce.
- E. The Court also presumes that the commercial meaning of a tariff term coincides with its common meaning in the absence to the contrary.

F. Consumers and industry participants do not restrict the common or commercial meaning of the term “ornament” to inexpensive or traditional items.

G. Customs cannot base its argument largely on the Explanatory Notes, in that such notes are inclusive rather than exclusive.

H. Absent legislative intent to the contrary, the term “ornament” should be construed to embrace evolving consumer tastes and covers both modern and traditional themes.

Holding - The term “ornament” as used in heading 9505, HTSUS, does not require items to hang, be inexpensive or traditional in theme or design.

II. Classification

ARTICLE	CLASSIFIED	CLAIMED	DECIDED
1. Wooden Nutcrackers	9502.10.4000	9505.10.1500	9505.10.1500
2. Wooden Pull Toy (Ice Skater)	9502.10.4000	9505.10.1500	9505.10.1500
3. Wooden Toy Smokers	9502.10.4000	9505.10.1500	9505.10.1500
4. Porcelain and Fabric Mache Santa	9502.10.4000	9505.10.2500	9505.10.2500
5. Fabric Mache Mrs. Claus	9502.10.4000	9505.10.2500	9505.10.2500
6. Cast Iron Stocking Hanger (Santa)	9505.10.5000	9505.10.2500	9505.10.2500
7. Cast Iron Stocking Hanger (Santa with lamb)	9505.10.5000	9505.10.2500	9505.10.2500
8. Cast Iron Stocking Hanger (Christmas elf)	9505.10.5000	9505.10.2500	9505.10.2500
9. Cast Iron Stocking Hanger (Stacked animals)	9505.10.5000	9505.10.2500	9505.10.2500
10. Cast Iron Stocking Hanger (Cargo car)	9505.10.5000	9505.10.2500	9505.10.2500
11. Terra Cotta Turkey Container	6913.90.5000	9505.90.6000	6913.90.5000
12. Earthenware Rabbit w/Rabbit	6913.90.5000	9505.90.6000	6913.90.6000
13. Heart-Shaped Wreath	8306.29.0000	9505.90.6000	9505.90.6000
14. Jack-O-Lantern Mug	6912.00.4400	9505.90.6000	9505.90.6000
15. Jack-O-Lantern Pitcher	6912.00.4800	9505.90.6000	9505.90.6000
16. Christmas Water globe	7013.99.5000	9505.10.2500	9505.10.2500

		Or	
		3926.90.9000	
17. Easter Water globe	7013.99.5000	9505.90.6000	9505.90.6000
		Or	
		3926.90.9000	
18. Santa w/Chimney Smoker	9505.10.5000	9505.10.1500	9505.10.1500
19. Fabric Mache Santa	9505.10.5000	9505.10.2500	9505.10.2500
20. Fabric Mache Scanda Klaus	9505.10.5000	9505.10.2500	9505.10.2500
21. Fabric Mache MacNicholas	9505.10.5000	9505.10.2500	9505.10.2500
22. Santa w/Light-up Tree	9505.10.5000	9505.10.2500	9505.10.2500
23. Resin Figures (Hooded Santa)	9505.10.4000	9505.10.2500	9505.10.2500
24. Resin Figures (Santa with tree)	9505.10.4000	9505.10.2500	9505.10.2500
27. Resin Figures (Old fash. Santa)	9505.10.4000	9505.10.2500	9505.10.2500
28. Resin Figures (Santa with deer)	9505.10.4000	9505.10.2500	9505.10.2500
29. Resin Figures (Santa sewing)	9505.10.4000	9505.10.2500	9505.10.2500
25. Resin Figures (Santa on sleigh)	9505.10.4000	9505.10.2500	9505.10.2500
26. Resin Figures	9505.10.4000	9505.10.2500	9505.10.2500

A. The Court finds:

1. The sample products presented all come within the common definition of the term “doll”. Doll is an *eo nomine* provision.
2. The sample products presented are described accurately as Christmas ornaments. The tariff provision for Christmas ornaments is a use provision.

B. The Court uses the five (5) factors delineated in *United States v. Carborundum Co.* To determine the most specific heading under GRI 3 (a). They are:

1. The general physical characteristics of the merchandise,
 - A. The article is decorated in a motif specific to a recognized holiday.
2. The use, if any, in the same manner as merchandise which defines the class,
 - B. All of the items are principally, if not exclusively, used only during the holiday season for the specific purpose of decorating or ornamenting the home or Christmas tree.
3. The expectations of the purchasers of the merchandise,
 - A. The purpose for the purchase is to decorate the home.

4. The channel of trade in which the merchandise moves,
 - A. The article is marketed during, or immediately prior to, a recognized holiday.
5. The environment of the sale of the merchandise (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed).
 - A. Such merchandise is advertised with other articles that are clearly unique to a specific holiday.

ADDITIONAL INFORMATION

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as “trade friendly” within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be “downloaded” to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. The CEBB may be accessed by modem or through Customs Home Page on the World Wide Web. If you access it by modem, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 921-6236.

The Internet

The Customs home page on the Internet’s World Wide Web --which began public operation on August 1, 1996-- will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as “trade friendly” within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc.*, which may be searched, read online, printed or “downloaded” to your own PC. In addition, the CEBB (see above) may be accessed through our Home Page. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is <http://www.customs.ustreas.gov>.

Customs Regulations

The current edition of *Customs Regulations of the United States*, in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1997 Edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1996 through March, 1997 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* (“*Customs Bulletin*”) is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U. S. Court of International Trade and Customs related decisions of the U. S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for \$20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

In order to assist the trade, Customs has prepared a video tape entitled “Customs Compliance: Why You Should Care.” This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs “Modernization Act” and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part, approximately 12 minutes in length, explains why Customs and the trade

can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at \$15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Informed Compliance Publications

The U. S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- # Fibers & Yarns
- # Buying & Selling Commissions
- # NAFTA for Textiles & Textile Articles
- # Raw Cotton
- # Customs Valuation
- # Textile & Apparel Rules of Origin
- # Mushrooms
- # Marble
- # Peanuts
- # Caviar
- # Bona Fide Sales & Sales for Exportation
- # Caviar
- # Granite
- # Internal Combustion Piston Engines
- # Vehicles, Parts and Accessories
- # Articles of Wax, Artificial Stone and Jewelry
- # Tariff Classification
- # Classification of Festive Articles as a result of *Midwest of Cannon Falls* Court Case

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

<p>The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs classification issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.</p>
